IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL WRIT No. 3042 of 2004

JEETA RAM
V/S
GANPAT RAM & ORS

Mr. SURESH SHRIMALI, for the appellant / petitioner

Mr. SANDEEP SHAH & Mr. SC MALOO, for the respondent

Date of Order : 4.7.2007

HON'BLE SHRI N P GUPTA,J.

ORDER

Heard learned counsel for the parties.

By the impugned order, the learned lower Appellate Court has dismissed the application of the petitioner under O. 11 Rule 14 C.P.C., which has been dismissed mainly on the ground, that the Municipality from whom the record is sought to be summoned, is not a party in the litigation, while the Municipality is a party.

On the other hand, learned counsel for the respondent submits, that the application was filed before the learned lower Appellate Court, and not before the learned trial court, who had already decided the suit, and that before the learned lower Appellate Court, if the appellant wanted to produce any additional evidence, the only appropriate remedy would have been only under O. 41 Rule 27, and not under O. 11 Rule 14 C.P.C.

In my view, may be that the Municipality was a party to the litigation, but then there is substance in the submission of the learned counsel for the respondent, that the application could not have been filed under O. 11 Rule 14, as the trial is already over.

Learned counsel for the petitioner in this regard submitted that the learned lower Appellate Court has powers under Section 107 C.P.C.

In my view, Section 107(a) comprehends the provision contained in O. 41 Rule 27. As such, I am not inclined to interfere with the impugned order at this stage, though for different reasons.

The writ petition is, therefore, dismissed summarily. However, it will be open to the petitioner to assail the correctness, legality or propriety of the impugned order by setting forth appropriate ground in appeal, if necessity so arises, and if the petitioner so stands advised.

The learned lower Appellate Court is directed to decide the appeal most expeditiously.

(N P GUPTA),J.

/Sushil/